

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Criminal Action
 No. 13-10200-GAO
)
DZHOKHAR A. TSARNAEV, also)
known as Jahar Tsarni,)
)
)
Defendant.)
)

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY TWENTY-SIX

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, March 3, 2015
11:38 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

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PROCEDINGS

THE CLERK: All rise for the Honorable Court.

(The Court enters the courtroom at 11:38 a.m.)

THE CLERK: Please be seated.

THE COURT: Good morning, everyone.

VOICES IN UNISON: Good morning, your Honor.

THE COURT: We appreciate your being here. We

apologize for some of the delays; it's logistics principally. And we're ready to proceed now with the next and final stage of the selection of the jury for the case of *United States v.*

Dzhokhar Tsarnaev.

This will involve the exercise of what are called "peremptory challenges" by both sides. A peremptory challenge is a request to excuse a juror for which no reason need be given. Each side is, by law, allotted a certain number of peremptory challenges, and we're going to have the parties now exercise those choices.

18 They will be doing it by indicating their choices on a
19 form that will be circulated back and forth between counsel and
20 will be monitored by me as we go along. And at the end, we'll
21 announce the outcome of the challenges, who remains in the pool
22 to serve as the jury and who will be excused.

23 So we'll begin now. I think each side has a form.

24 The government will start. And I guess that will now become
25 the form.

1 MR. MELLIN: Thank you, your Honor.

2 (Long pause.)

3 THE COURT: May I see counsel briefly at sidebar,
4 please.

5 (Discussion at sidebar and out of the hearing of the
6 jury:)

7 THE COURT: Is this the official? All right. I
8 double-checked it against mine and I think it's fine. This is
9 what I understand we have. I'd like you to see if your records
00:32 10 reflect that.

11 MS. CLARKE: Yeah.

12 (Pause.)

13 MR. BRUCK: Yes.

14 THE COURT: All right?

15 MR. BRUCK: Yes.

16 THE COURT: All right?

17 MR. WEINREB: Yes.

18 THE COURT: You can check it in a minute. I just
19 wanted to -- you've got the list?

00:33 20 MR. CHAKRAVARTY: We do, yes. The government does
21 make a reverse *Batson* challenge with regards to the defense's
22 apparent systematic exclusion of Latino jurors. There were
23 two, I think, self-identified, I think a third whose name
24 convention suggests -- and appearance suggests she's also
25 Latino, and that results in effectively eliminating all visible

1 minorities. The government thinks it is appropriate to
2 disallow the strikes.

3 THE COURT: Do you have the numbers?

4 MR. CHAKRAVARTY: Yes, your Honor. 308 --

5 THE COURT: All right.

6 MR. CHAKRAVARTY: -- 350 and 390.

7 MR. BRUCK: Just those two?

8 MR. CHAKRAVARTY: Three.

9 MR. BRUCK: What was the first one?

00:34 10 MR. CHAKRAVARTY: 308.

11 THE COURT: Do you want to address that?

12 MS. CLARKE: If we may just have a moment?

13 (Counsel confer off the record.)

14 MR. BRUCK: Our position is there has been no prima
15 facie showing of intentional ethnic or racial discrimination by
16 the government so the objection should be denied.

17 THE COURT: Why don't you make me a proffer as to each
18 of them.

19 MS. CLARKE: I didn't hear the question.

00:37 20 MR. BRUCK: The Court would like a proffer as to each
21 juror.

22 MS. CLARKE: We could do that with our notes.

23 MR. BRUCK: We would need to draw back. I don't
24 remember a lot of it, but...

25 THE COURT: All right.

1 (Pause.)

2 MR. BRUCK: Your Honor, we would like a short recess
3 to make sure that we have -- I mean, I could do this off the
4 cuff and it probably would be satisfactory, but we want to be
5 sure we put every permissible basis and actual reasons for
6 these strikes on the record, which means going back to our
7 files and --

8 THE COURT: Which is where?

9 MR. BRUCK: Well, we have everything here on it.

00:38 10 THE COURT: Right.

11 MR. BRUCK: The record of the voir dire, the
12 questionnaires, our notes.

13 THE COURT: Well, I'd rather not break up the session
14 here.

15 MR. BRUCK: Well, I can --

16 THE COURT: I'll give you the time here while we --

17 MR. BRUCK: Right. I mean, I can make a proffer of
18 some of the reasons they are not going to be --

19 MS. CLARKE: Let's just look at our stuff and then you
00:38 20 can come up?

21 MR. BRUCK: Yeah, let's do that.

22 (Pause.)

23 MR. BRUCK: So we'll take these in order. Juror 308
24 was a dispatcher at Northeastern University and was actively
25 involved in police work on the night of April 18th to 19th. In

1 addition -- that was certainly enough for us not to think she
2 should be on the jury. In addition to that, she clearly had
3 ambition to be a law enforcement officer, and that was the
4 direction of her career trajectory. And we felt that given the
5 fact that this was the -- the case involved the murder of a
6 police officer, she would -- even though she said otherwise on
7 voir dire, that it was likely that she was going to feel
8 pressured to go with the perceived interests or desires of law
9 enforcement as a juror in this case and not be the person that
00:42 10 spared the Boston Marathon bomber from receiving the death
11 penalty.

12 As to Number 350, he had extremely strong pro death
13 penalty views. He was the juror who felt based on his
14 experiences in Puerto Rico that the death penalty sometimes was
15 necessary to, quote, send a message. And he, more than any
16 other juror in this entire process, talked about the value of
17 using the death penalty for deterrence, which is something that
18 goes against the whole idea of considering mitigation. So we
19 thought he was an exceptionally dangerous juror from the point
00:42 20 of view of imposing the death penalty on our client. We note
21 that we made a motion to strike Juror 350 that the Court
22 overruled on the grounds of his pro death penalty views.

23 Juror 390 was a 10 on her form. We also moved to
24 disqualify Juror 390 on the basis of her pro death penalty
25 views and rated her as an extremely adverse juror for her

1 punishment views.

2 For those three reasons, we exercised our peremptories
3 to exclude them using exactly the same criteria that we did for
4 all the other jurors.

5 MR. CHAKRAVARTY: The government recognizes each of
6 those as a plausible non-racially-based basis for striking;
7 however, in the context of the litigation on the juror pool,
8 it's clear that the defense has advanced a theory that
9 the -- both the jury pool, the venire, as well as the -- those
00:44 10 that were to be conducted by individual voir dire have not been
11 racially diverse. And to the extent that the three visible
12 minorities are on the panel have now been struck by the
13 defense, I just wanted the record to reflect that despite the
14 fact that there is a plausible non-racially based reason, there
15 is still a strong inference that race played a role in that
16 decision and we object to it.

17 MR. BRUCK: Well, I don't know that that requires us
18 to respond.

19 THE COURT: I don't think it does.

00:44 20 MR. BRUCK: Thank you.

21 THE COURT: The record is there for whatever it means
22 for the statistical argument, and it's certainly clear that to
23 the extent there are no minorities, Hispanic minorities in this
24 petit jury, it's clear that it was at the choice -- not for
25 that reason, but at the choice of peremptories that the defense

1 made to shape the jury that way, for whatever that means. I
2 accept the proffer as to the non-ethnic or racial-based reasons
3 for the strikes.

4 Okay. So we will begin as we planned with 530.

5 MR. CHAKRAVARTY: And go one at a time?

6 MR. BRUCK: I think it is two and one.

7 THE COURT: I was going to do two and one, but I could
8 do one, one, one.

9 MR. CHAKRAVARTY: We prefer to do one, one, one.

00:45 10 THE COURT: All right. One, one, one is fine.

11 MR. CHAKRAVARTY: Thank you.

12 (In open court:)

13 (Long pause.)

14 THE COURT: Let me again see counsel, please, at the
15 side.

16 (Discussion at sidebar and out of the hearing of the
17 jury:)

18 THE COURT: Everybody agree?

19 MS. CLARKE: Yes.

00:54 20 THE COURT: I'm going to now call each of these in
21 sequence, all 18, in the box. After that, we'll have a few
22 remarks, excuse the others, and take them in the back, okay?

23 MR. CHAKRAVARTY: Thank you.

24 MS. CLARKE: Thank you, your Honor.

25 (In open court:)

1 THE COURT: The parties have exercised their
2 peremptory strikes and those have been recorded. Will the
3 following jurors come forward to take their seats in the jury
4 box: Juror No. 35, Juror No. 41, Juror No. 83, Juror No. 102,
5 Juror No. 138, Juror No. 229, Juror No. 286, Juror No. 349,
6 Juror No. 395, Juror No. 441, Juror No. 480, Juror No. 487,
7 Juror No. 552, Juror No. 567, Juror No. 588, Juror No. 598,
8 Juror No. 608, Juror No. 638.

9 Jurors, you have now been selected to serve as the
01:00 10 trial jurors and alternates in this case. In a moment we're
11 going to have you come back into the back room and have some
12 logistical discussions with you about proceeding.

13 The other jurors may return to the jury room. They're
14 excused. I guess you don't have to go to the jury room. See
15 the jury clerk on the way out. You'll be excused.

16 (The venire is excused.)

17 THE COURT: All right. We will recess until tomorrow
18 morning formally when we will begin the presentation, the
19 swearing of the jury and the presentation of the case. For
01:02 20 now, jurors, we would like you to go into the jury room for a
21 little, as I say, orientation and explanation of how we'll be
22 proceeding as a logistical matter, all right?

23 The jury will withdraw.

24 THE CLERK: All rise.

25 (The Court and jury exit the courtroom and the

1 proceedings concluded at 12:40 p.m.)
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1 C E R T I F I C A T E
23 I, Marcia G. Patrisso, RMR, CRR, Official Reporter of
4 the United States District Court, do hereby certify that the
5 foregoing transcript constitutes, to the best of my skill and
6 ability, a true and accurate transcription of my stenotype
7 notes taken in the matter of Criminal Action No. 13-10200-GAO,
8 United States of America v. Dzhokhar A. Tsarnaev.
910 /s/ Marcia G. Patrisso
11 MARCIA G. PATRISSO, RMR, CRR
Official Court Reporter12 Date: 9/29/15
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